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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

F. ABRAHAM CARATTINI,

Defendant and Appellant.

E070716

(Super.Ct.No. FVA1201925)

OPINION

APPEAL from the Superior Court of San Bernardino County. Elia V. Pirozzi,  
Judge. Affirmed with directions.

Alissa Bjerkhoel, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney  
General, Julie L. Garland, Attorney General, and A. Natasha Cortina and Kelley Johnson,  
Deputy Attorneys General, for Plaintiff and Respondent.

## I.

### INTRODUCTION

Defendant and appellant, F. Abraham Carattini, entered a *West*<sup>1</sup> plea of no contest to one count of assault by means of force likely to produce great bodily injury (Penal Code, § 245, subd. (a)(4)),<sup>2</sup> but was released pursuant to the terms of a *Cruz*<sup>3</sup> waiver. Following an evidentiary hearing, the trial court found defendant violated the terms of his *Cruz* waiver and imposed a sentence of four years in state prison, but suspended the sentence pending successful completion of probation as well as his payment of a battered women's shelter fee in the amount of \$500 pursuant to section 1463.27.

On appeal, defendant contends (1) the trial court failed to make a specific finding that defendant's *Cruz* waiver violation was "willful," necessitating remand for the trial court to make such a determination, (2) there was insufficient evidence to support a finding that defendant's *Cruz* waiver violation was "willful," and (3) the \$500 battered women's shelter fee should be stricken as unauthorized. The People agree that the battered women's shelter fee was unauthorized. We modify the judgment to strike the order imposing a \$500 battered women's shelter fee and affirm the judgment as modified.

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<sup>1</sup> *People v. West* (1970) 3 Cal.3d 595, allows a court to accept a plea of guilty or no contest to an uncharged offense or an offense which is not necessarily included in a charged offense. (*Id.* at 613.)

<sup>2</sup> Undesignated statutory references are to the Penal Code.

<sup>3</sup> *People v. Cruz* (1988) 44 Cal.3d 1247, 1254, fn. 5.

## II.

### FACTS AND PROCEDURAL BACKGROUND

#### *A. Factual Background and Charges*

On December 31, 2009, officers responded to a call regarding a domestic dispute between defendant and his wife, A.A. Defendant was charged with corporal injury on a cohabitant (§ 273.5, subd. (a)) and felony false imprisonment (§ 236) arising out of the incident. The charges were subsequently dismissed when A.A. declined to testify against defendant.

Sometime thereafter, defendant and A.A. became involved in a custody battle in the family law division of the Los Angeles Superior Court over custody of their son. While the family law proceedings remained unresolved, the People refiled charges against defendant arising out of the December 31, 2009, incident.

On July 19, 2013, the People filed an information charging defendant with corporal injury on a cohabitant (§ 273.5, subd. (a)) and felony false imprisonment (§ 236). The information further alleged that defendant inflicted great bodily injury on A.A. in the commission of the offense charged in count 1. (§ 12022.7, subd. (e).)

#### *B. Defendant's Plea Bargain and Cruz Waiver*

On January 12, 2017, defendant and the People reached a negotiated disposition. Pursuant to that agreement, the People filed an amended information adding a charge of assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4)) as count 3); defendant entered a *West* plea of no contest to count 3; and the People moved to

dismiss the remaining counts and allegations against defendant. The trial court dismissed counts 1 and 2 and then released defendant pending sentencing on a *Cruz* waiver.

Defendant's *Cruz* waiver included a requirement that he comply with a criminal protective order (CLETS<sup>4</sup> protective order), which provided, in part, that defendant: (1) "must not harass, strike, threaten, assault (sexually or otherwise), follow, stalk, molest, destroy or damage personal or real property, disturb the peace, keep under surveillance, or block movements of [A.A.]" [Section 7]; (2) "must take no action to obtain the addresses or locations of protected persons or their family members, caretakers, or guardian unless good cause exists otherwise" [Section 10]; and (3) "must have no personal, electronic, telephonic, or written contact with [A.A.]" [Section 12].

As an exception to the "no contact" provision of section 12, the order provided that defendant be permitted to "have peaceful contact with [A.A.] . . . only for the safe exchange of children and court-ordered visitations as stated in . . . any Family, Juvenile, or Probate court order . . . ."

On February 2, 2018, the date initially set for sentencing, the People informed the trial court that defendant had been charged in Los Angeles County with misdemeanor contempt of court. (§ 166, subd. (a)(4).) The trial court ordered defendant back into custody and postponed defendant's sentencing hearing pending a determination whether defendant had violated the terms of his *Cruz* waiver.

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<sup>4</sup> California Law Enforcement Telecommunications System (CLETS). (*People v. Martinez* (2000) 22 Cal.4th 106, 113.)

### *C. Cruz Waiver Hearing and Sentencing*

On March 9, 2018, the trial court conducted a hearing to determine whether defendant had violated the terms of his *Cruz* waiver. The People asserted that defendant had violated sections 7, 10 and 12 of the CLETS protective order included as part of defendant's *Cruz* waiver.

A.A. testified that she had received multiple text messages from defendant unrelated to the peaceful exchange of custody or welfare of their child. The text messages received by A.A. included statements such as: "I hope he's there, or I will have you arrested for violating court orders"; "Because your family was crazy you need to be diagnosed. And your own daughter didn't want to live with you"; "I don't know how you can sleep [at] peace at night knowing what you have done to our son"; "I was hoping you start parenting . . . ." "The only one that has been diagnosed here is you with bipolar schizophrenic. You are still in denial"; and "You have lost your mind completely." Additionally, A.A. discovered that the cell phone provided by defendant to their child contained GPS tracking software which had been installed and engaged. Finally, A.A. testified she had been subjected to multiple investigations or inquiries by the Department of Children and Family Services and the Monrovia Police Department initiated as the result of defendant's reports of abuse, none of which resulted in any findings of abuse.

Defendant acknowledged that he sent each of the text messages identified in A.A.'s testimony. Defendant testified that the family court had expanded the scope of permissible communication between himself and A.A. to include communications regarding the health, education, and general welfare of their child and that each of the text messages were sent in the context of concern for his child. Defendant acknowledged that the cell phone he provided to his child contained GPS tracking software, but stated that it was A.A.'s responsibility to disable any such software. Defendant did not dispute that he reported A.A. to the Monrovia Police Department and the Department of Children and Family Services on multiple occasions for child abuse. Defendant testified his reports were sincerely motivated and permitted by the family court.

The trial court was provided a transcript and subsequent order related to the family law proceedings referenced in both A.A. and defendant's testimony.

At the conclusion of the hearing, the trial court found that defendant violated the conditions of his *Cruz* waiver. In doing so, the court identified the multiple text exchanges between defendant and A.A. unrelated to the peaceful exchange of custody of their child; the existence of GPS tracking software on the cell phone provided by defendant to his child; and the multiple complaints of child abuse to law enforcement against A.A. as support for its finding that defendant violated the terms of the CLETS protective order provisions incorporated into his *Cruz* waiver.

The court sentenced defendant to four years in state prison on count 3, but suspended the sentence pending defendant's successful completion of four years formal probation, and imposed a battered women's shelter fee in the amount of \$500 pursuant to section 1463.27. Defendant appeals.

### III.

#### DISCUSSION

##### *A. The Trial Court is not Required to Make Explicit Factual Findings*

Defendant claims that this matter must be remanded to the trial court with instructions to make further findings because the trial court failed to make an explicit factual finding that any violation of his *Cruz* waiver was "willful." However, "a lower court judgment is presumed correct, and when a lower court has made no specific findings of fact, it is presumed that the court made such implied findings as will support the judgment. [Citations.]" (*Hall v. Municipal Court* (1974) 10 Cal.3d 641, 643.)

While defendant asserts that an express finding of willfulness is "required by law," he cites no legal authority, and we have found none, which sets forth such a requirement. We further note that this court has previously rejected similar arguments in analogous situations. (See *People v. Puente* (2008) 165 Cal.App.4th 1143, 1150 [rejecting argument that due process was violated where trial court failed to explain why defendant was found in violation of *Cruz* waiver]; see also *People v. Carr* (2006) 143 Cal.App.4th 786, 792 [rejecting argument that due process required trial court to make detailed

statement of reasons for finding defendant violated terms of *Vargas*<sup>5</sup> waiver].) We presume the trial court made all necessary factual determinations to support its finding defendant willfully violated the terms of his *Cruz* waiver and decline to vacate the judgment on this ground. This approach is particularly appropriate here where the trial court expressly stated that defendant could not be found in violation of his *Cruz* waiver unless such violation was determined to be willful.

*B. Substantial Evidence Supports the Finding of a Cruz Waiver Violation*

Defendant claims in the alternative that the evidence is insufficient to support the trial court's determination that he violated the terms of his *Cruz* waiver. We disagree.

1. Standard of Review and Applicable Legal Principles

A defendant may plead guilty or no contest pursuant to a plea agreement and remain out of custody until sentencing pursuant to a so-called *Cruz* waiver. (*Cruz, supra*, 44 Cal.3d at p. 1254, fn. 5; *People v. Masloski* (2001) 25 Cal.4th 1212, 1219-1224.) Such a waiver gives the trial court the power to withdraw its approval of the defendant's plea and impose a sentence in excess of the bargained-for term if the defendant willfully fails to appear for sentencing or willfully engages in specified prohibited conduct. (*Cruz, supra*, at p. 1254, fn. 5.)

The question whether a defendant violated a condition of his release is determined by the trial court under a preponderance of the evidence standard and reviewed under the substantial evidence test. (*People v. Rabanales* (2008) 168 Cal.App.4th 494, 509.)

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<sup>5</sup> *People v. Vargas* (1990) 223 Cal.App.3d 1107.

“‘[T]he power of an appellate court *begins* and *ends* with the determination as to whether, on the *entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination . . . .’” (*Ibid.*, citing *Bowers v. Bernards* (1984) 150 Cal.app.3d 870, 873-874.)

## 2. Analysis

Defendant does not dispute that his *Cruz* waiver required him to comply with a CLETS protective order which prohibited harassment or communication with A.A. for purposes other than the peaceful exchange of children or as otherwise ordered by the family court. Nor does defendant dispute that he sent text messages directly to A.A.; provided a cell phone equipped with GPS tracking software to their child; and reported A.A. to authorities for alleged child abuse on more than one occasion. Rather, defendant claims that there is insufficient evidence to show that any of these acts were committed “willfully.”

However, “[t]he word ‘willfully,’ when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act . . . . It does not require any intent to violate law, or to injure another . . . .” (§ 7, subd. 1; see also *People v. Atkins* (2001) 25 Cal.4th 76, 85.) Here, defendant admitted sending text communications to A.A. The substance of defendant’s text communications with A.A. contained statements which appear unnecessary to facilitate custody exchanges.<sup>6</sup> These

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<sup>6</sup> Even assuming the scope of permissible communication under the CLETS protective order included general inquiries regarding the welfare of defendant’s child, statements such as “‘I will have you arrested for violating court orders’”; “‘Because your

*[footnote continued on next page]*

messages alone are sufficient to allow a trier of fact to reasonably conclude that defendant communicated with A.A. for purposes outside of those permitted by the CLETS protective order. Thus, substantial evidence supports the court's determination that defendant willfully violated this term of his *Cruz* waiver. Given this conclusion, we need not address defendant's additional arguments that the evidence is insufficient to support the trial court's determination he violated other provisions of his *Cruz* waiver by providing his child with a cellphone equipped with GPS tracking software and making multiple reports of abuse against A.A. to authorities.

*C. The \$500 Battered Women's Shelter Fee Should Be Stricken*

Defendant claims that the court's imposition of a \$500 battered women's shelter fee pursuant to section 1463.27 is unauthorized as the statute provides for imposition of the fee only if he is convicted of specifically enumerated offenses and the offense to which he entered a plea of no contest is not one of those specified offenses. The People do not contest this point and agree that the fee should be stricken pursuant to *People v. Soto* (2016) 245 Cal.App.4th 1219, 1229-1231. We agree that the fee was unauthorized and modify the judgment accordingly.

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family was crazy you need to be diagnosed"; "The only one that has been diagnosed here is you with bipolar schizophrenic"; and "You have lost your mind completely" can be interpreted as unnecessary for this purpose.

IV.

DISPOSITION

The judgment is modified by striking that portion of the judgment imposing a \$500 battered women's shelter fee pursuant to section 1463.27. The matter is remanded to the trial court with directions to prepare a supplemental sentencing minute order and amended abstract of judgment reflecting this modification, and to forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. The judgment is affirmed in all other respects.

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FIELDS  
J.

We concur:

MILLER  
Acting, P. J.

RAPHAEL  
J.